

**SERIAL 02098 RFP AUDIT ASSISTANCE, INTERNAL AUDIT-KPMG**

**DATE OF LAST REVISION: February 23, 2006 CONTRACT END DATE: December 31, 2006**

**DECEMBER 31, 2006**  
~~DECEMBER 31, 2005~~  
~~DECEMBER 31, 2004~~  
**CONTRACT PERIOD THROUGH DECEMBER 31, 2003**

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **AUDIT ASSISTANCE, INTERNAL AUDIT**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **December 18, 2002**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

---

Wes Baysinger, Director  
Materials Management

**DL/mm**  
Attach

Copy to: Clerk of the Board  
Ross Tate, Internal Audit  
**Mirheta Muslic**, Materials Management

(Please remove Serial 00141-RFP, 00142-RFP from your contract notebooks)



# **CONTRACT FOR SERVICES PURSUANT TO RFP AUDIT ASSISTANCE, INTERNAL AUDIT**

SERIAL 02098-RFP

This Contract is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between **Maricopa County** ("County"), a political subdivision of the State of Arizona, and **KPMG LLP, a Delaware limited liability partnership, having an office at 400 E. Van Buren Street, Phoenix, Arizona 85004** ~~an Arizona corporation~~ ("Contractor") for the purchase of Auditing Assistance in the areas of General Auditing Services, Health Auditing Services and Information System Auditing Services.

## 1.0 TERM

- 1.1 This Contract is for a term of ONE (1) year, beginning on the 1<sup>st</sup> day of January 2003 and ending the 31st day of December ~~2003 2004 2005~~ **2006**.
- 1.2 The County may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional one (1) year term up to a maximum of four (4) additional terms. The County shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

## 2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum stated in Final Pricing, attached hereto and incorporated herein as Exhibit "A." Payment shall be made as set forth in the RFP and/or the Best and Final Offer.
- 2.2 Payment under this Contract shall be made in the manner provided by law. Invoices shall be prepared and submitted in accordance with the instructions provided on the purchase order. The format for invoices shall follow procedures outlined by the Maricopa County Internal Audit Department (IA) prior to submittal of first invoice. The contractor shall adhere to these procedures throughout the term of the contract. These procedures will be subject to revisions at the discretion of IA. All invoices, at a minimum, shall include the following:
  - 2.2.1 Invoice number.
  - 2.2.2 Purchase Order number.
  - 2.2.3 Terms of Payment.
  - 2.2.4 Name and Classification of person(s) providing service.
  - 2.2.5 Hourly rate of person(s) providing service.
  - 2.2.6 Dates and number of hours worked.
  - 2.2.7 Timesheets approved by IA.

## 3.0 DUTIES

- 3.1 The Contractor shall perform all duties stated in the Agreed Scope of Work, attached hereto and incorporated herein as Exhibit "B."

- 3.2 Contractor shall perform services at the location(s) and time(s) stated in Exhibit "B," or in the purchase order requesting such services.
- 3.3 During the Contract term, County shall provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out its contractual obligations.

#### 4.0 TERMS & CONDITIONS

##### 4.1 INDEMNIFICATION AND INSURANCE:

###### 4.1.1 Indemnification.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses for death, bodily injury or damage to tangible property including but not limited to attorney fees and costs caused by the Contractor in the performance of this Contract.

The Contractor's maximum liability to the County arising for any reason relating to the Contractor's performance of this Contract, or any amendment thereto, shall be limited to the amount of fees paid to the Contractor for its performance. Neither party shall have any liability to the other party for any lost profits or special, incidental, indirect or consequential damages, even if the other party has been advised to the possibility of such damages.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the negligence of the County.

###### 4.1.2 Insurance Requirements.

Contractor, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed companies in the State of Arizona with policies and forms satisfactory to the County.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of the County, constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance as respects the County, and any insurance or self-insurance maintained by the County shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the County.

The Contractor shall be solely responsible for the deductible and/or self-insured retention and the County, at its option, may require the Contractor to secure payment of such deductibles or self-insured retention's by a surety bond or an irrevocable and unconditional letter of credit.

The County reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The County shall not be obligated, however, to review such policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, shall name the County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The insurance policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against the County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

4.1.2.1 Commercial General Liability. Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof.

The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision, which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 11 85, and shall include coverage for Contractor's operations and products and completed operations.

If the Contractor subcontracts any part of the work, services or operations awarded to the Contractor, Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the performance of the Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

4.1.2.2 Automobile Liability. Contractor shall maintain Automobile Liability insurance with an individual single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to Contractor's vehicles (whether owned, hired, non-owned), assigned to or used in the performance of this Contract.

4.1.2.3 Workers' Compensation. The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

If any work is subcontracted, the Contractor will require Subcontractor to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of the Contractor.

4.1.3 Certificates of Insurance.

4.1.3.1 Prior to commencing work or services under this Contract, Contractor shall have insurance in effect as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall be made available to the County upon 48 hours notice. **BY SIGNING THE AGREEMENT PAGE THE CONTRACTOR AGREES TO THIS REQUIREMENT AND FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF CONTRACT.**

In the event any insurance policy(ies) required by this Contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the County fifteen (15) days prior to the expiration date.

4.1.4 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty-(30) day's prior written notice to the County.

4.2 PROCUREMENT CARD ORDERING CAPABILITY:

It is the intent of Maricopa County to utilize the Bank of America MasterCard Procurement Card, or other procurement card that may be used by the County from time to time, to place and make payment for orders under the Contract.

4.3 INTERNET ORDERING CAPABILITY:

It is the intent of Maricopa County at its option to utilize the Internet to place orders under this Contract.

4.4 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County  
Department of Materials Management  
Attn: Director of Purchasing  
320 West Lincoln Street  
Phoenix, Arizona

For Contractor:

KPMG LLP  
~~2375 East Camelback Road~~ 400 E. Van Buren Street, Suite 1100  
Phoenix, AZ 85004

4.5 REQUIREMENTS CONTRACT:

Contractor signifies its understanding and agreement by signing this document, that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made. Orders will only be placed when County identifies a need and issues a purchase order.

Contractor shall take no action under this Contract unless specifically requested by County, which shall submit a written purchase order to Contractor requesting that work be performed or product be delivered.

County reserves the right to cancel purchase orders within a reasonable period of time after issuance. Should a purchase order be canceled, the County agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor pursuant to the purchase order. The County will not reimburse the Contractor for any costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order.

Contractor agrees to accept verbal cancellation of purchase orders.

**4.6 ESCALATION:**

Any requests for reasonable price adjustments must be submitted thirty (30) days prior to the Contract expiration date. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If County agrees to the adjusted price terms, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Producer Price Index or by performing a market survey.

**4.7 TERMINATION:**

County may unconditionally terminate this Contract for convenience by providing thirty-(30) calendar day's advance written notice to the Contractor.

County may terminate this Contract if Contractor fails to pay any charge when due or fails to perform or observe any other material term or condition of the Contract, and such failure continues for more than ten (10) days after receipt of written notice of such failure from County, or if Contractor becomes insolvent or generally fails to pay its debts as they mature. Prior to termination of this contract for cause, the County shall notify the Contractor in writing of its intent to terminate this contract for cause, identify the alleged deficiencies in performance giving rise to the intent to terminate, and shall give the Contractor 30 days to cure such deficiencies prior to termination.

**4.8 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:**

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or proposer to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

**4.9 OFFSET FOR DAMAGES;**

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

**4.10 ADDITIONS/DELETIONS OF SERVICE:**

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

**4.11 SUBCONTRACTING:**

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

**4.12 AMENDMENTS:**

All amendments to this Contract must be in writing and signed by both parties.

**4.13 RETENTION OF RECORDS:**

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions raised within five (5) years after final payment. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

**4.14 AUDIT DISALLOWANCES:**

If at any time County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

**4.15 VALIDITY:**

The invalidity, in whole or in part, of any provision of the Contract shall not void or affect the validity of any other provision of this Contract.

**4.16 RIGHTS IN DATA:**

The County shall have the use of data and reports resulting from this Contract without additional cost or other restriction except as provided by law.

4.16.1 The Contractor has created, acquired or owns various concepts, methodologies, and techniques; models; templates; software, user interfaces or screen designs; general purpose consulting and software tools; and logic, coherence and methods of operation of systems, collectively considered the "CONTRACTOR Property". The Contractor retains all ownership rights in the CONTRACTOR Property. The County shall acquire no right or interest in such property. In addition, the Contractor shall be free to provide services of any kind to any other party as the Contractor deems appropriate, and the Contractor may use the CONTRACTOR Property to do so. The Contractor acknowledges that CONTRACTOR Property shall not include any of the County's confidential information or the County's tangible or intangible property, and the Contractor shall have no ownership rights in such property.

**4.17 INTEGRATION**

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

**CONTRACTOR**

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINTED NAME AND TITLE

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
DATE

**MARICOPA COUNTY**

BY: \_\_\_\_\_  
DIRECTOR, MATERIALS MANAGEMENT

\_\_\_\_\_  
DATE

BY: \_\_\_\_\_  
CHAIRMAN, BOARD OF SUPERVISORS

\_\_\_\_\_  
DATE

ATTESTED:

\_\_\_\_\_  
CLERK OF THE BOARD

\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

\_\_\_\_\_  
MARICOPA COUNTY ATTORNEY

\_\_\_\_\_  
DATE



# EXHIBIT A

## 02098-RFP-AUDIT ASSISTANCE, INTERNAL AUDIT PRICING

SERIAL 002098-RFP-1

PRICING SHEET P089302/B0604645

PROPOSER NAME: KPMG LLP  
 F.I.D./VENDOR #: W000005081 X  
 PROPOSER ADDRESS: 400 E. Van Buren Street, Ste 1100, Phoenix, AZ 85004  
2375 East Camelback Road, Phoenix, AZ 85016  
 P.O. ADDRESS: \_\_\_\_\_  
 PROPOSER PHONE #: (602) 250-8117  
 PROPOSER FAX #: (602) 252-0011  
 COMPANY WEB SITE: www.kpmg.com  
 COMPANY CONTACT (REP): Lisa Daniels Michael Suba  
 E-MAIL ADDRESS (REP): Lisa Daniels [msuba@kpmg.com](mailto:msuba@kpmg.com)

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: X Yes \_\_\_\_\_ No

ACCEPT PROCUREMENT CARD: X Yes \_\_\_\_\_ NO

REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD: \_\_\_\_\_ YES X NO \_\_\_\_\_ % REBATE  
 (Payment shall be made within 48 hrs utilizing the Purchasing Card)

INTERNET ORDERING CAPABILITY: \_\_\_\_\_ YES X NO \_\_\_\_\_ % DISCOUNT

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: X YES \_\_\_\_\_ NO

PAYMENT TERMS: PROSPER IS REQUIRED TO PICK ONE OF THE FOLLOWING.  
 TERMS WILL BE CONSIDERED IN PRICING EVALUATION.  
 FAILURE TO CHOOSE A TERM WILL RESULT IN A DEFAULT TO NET 30.  
 PROSPER MUST INITIAL THE SELECTION BELOW.

NET 10	_____
NET 15	_____
NET 20	_____
NET 30	_____
NET 45	_____
NET 60	_____
NET 90	_____
2% 10 DAYS NET 30	_____
1% 10 DAYS NET 30	_____
2% 30 DAYS NET 31	_____
1% 30 DAYS NET 31	_____
5 % 30 DAYS NET 31	_____

INDICATE PERCENTAGE OF M/WBE PARTICIPATION IF ANY HERE: 0 %

### 1.0 GENERAL AUDIT ASSISTANCE:

ITEM DESCRIPTION	HOURLY RATE
1.1 Partner/Director	\$ <u>280</u>
1.2 Senior Manager	\$ <u>235</u>
1.3 Manager	\$ <u>190</u>
1.4 Sr. Auditor/ Sr. Consultant	\$ <u>120</u>
1.5 Auditor/Assistant	\$ <u>90</u>
1.6 Assistant/Administrative Staff	\$ <u>80</u>

**2.0 HEALTH SERVICES AUDIT ASSISTANCE:**

2.1 Partner/Director	\$ 280
2.2 Senior Manager	\$ 235
2.3 Manager	\$ 200
2.4 Sr. Auditor/ Sr. Consultant	\$ 175
2.5 Auditor/ Consultant	\$ 150
2.6 Assistant/Administrative Staff	\$ 80
2.7 Business analyst	\$ 80

**3.0 INFORMATION SYSTEMS SERVICES AUDIT ASSISTANCE:**

3.1 Partner/Director	\$ 280
3.2 Senior Manager	\$ 235
3.3 Manager	\$ 200
3.4 Sr. Auditor/ Sr. Consultant	\$ 175
3.5 Auditor/Consultant	\$ 150
3.6 Assistant/Administrative Staff	\$ 80
3.7 Business Analyst	\$ 80

**4.0 TRAVEL EXPENSES:**

Travel expenses must be authorized in advance by Maricopa County and will be reimbursed at cost.

**5.0 OTHER EXPENSES**

Report production, duplication and other miscellaneous expenses will be reimbursed at cost.

## **EXHIBIT B**

### **02098-RFP-AUDIT ASSISTANCE, INTERNAL AUDIT SCOPE OF WORK**

This contract encompasses auditing assistance to the Internal Audit (IA) Department of Maricopa County in three areas of expertise:

- Area 1-General Audit assistance
- Area 2-Health Services Audit Assistance
- Area 3-Information Systems Audit Assistance

Auditing assistance projects will be developed by IA for each area of expertise and sent to KPMG for response. Each response will be evaluated as to approach, methodology, personnel assigned and cost. For awarded projects KPMG will coordinate all phases of work with IA. All work is to be performed in accordance with Government Auditing Standards.

For Health Services Audit Assistance projects, KPMG must comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104-191. (ATTACHMENT 1)

#### **SCOPE OF WORK**

This scope of work includes an assessment of the key business processes and procedures in place to manage the risks and to develop a prioritized audit plan for each project requested by IA. Once the key processes for an audit have been identified the focus shall be on the planning and executing of the audit to include:

- Testing the design effectiveness of the processes and
- Testing the compliance and effectiveness of the controls.

The objectives of each audit shall be to:

- Efficiently capture the information needed to assess all major aspects of the key business processes under review and the related controls
- Minimize the disruptions to normal operations; and
- Effectively communicate all findings to the IA department

#### **Phase I-Audit Planning**

Conduct (or assist in conducting) audit planning activities. Work with IA or the audited department to understand the critical elements of the business and operating environment. Identify and document all critical business controls, processes and sub-processes and document business objectives including those significant areas of risk that must be managed.

Analyze the key business processes and related risks that impact the operational and financial processes. For each key business process:

- Identify and understand the key inputs, outputs, activities and related business risks
- Identify the internal business and financial controls in place to reduce those risks to an acceptable level
- Compare the “as is condition” to detailed Internal Audit industry templates of controls and risks that are typically found in these processes
- Identify critical success factors and key performance indicators that measure the processes, integrity and reporting and assess the accuracy of these measurements and their effective use by management.

## **Phase II-Fieldwork**

Evaluate primary, secondary, and/or mitigating controls identified during the risk assessment phase and design appropriate audit tests. Evaluate residual risk (which is the remaining risk, presuming identified controls are working as intended). If the residual risk is acceptable, tests of those controls are assessed to ensure that the controls are working as intended. If the residual risk is deemed unacceptable, appropriate recommendations shall be developed, so that the residual risk is reduced to an acceptable level.

Conduct (or assist in conducting) an assessment of each audit area to:

- Determine the impact and probability that the identified business risks are likely to occur;
- Measure and prioritize the identified business risks in quantitative and qualitative terms;
- Identify the critical controls and individuals accountable for managing these risks;
- Obtain management consensus with the process risk profile; and
- Develop a risk-based control and audit program for the selected processes, functions or systems that focus on optimizing risk management.

## **Phase III-Report Preparation/Presentation**

### Preparation

Prepare (or assist in preparing) draft and final reports including all supporting documentation using IA Department formats. At the completion of all fieldwork and prior to issuing a draft report, a formal meeting will be held with the auditee(s) and IA to review all findings, and to discuss alternatives for mitigating the risks associated with the identified control weaknesses.

The final deliverables shall include:

- Maricopa County Internal Audit Leadsheets, which include the *finding, criteria, condition, effect, cause, and recommendation*
- Work program and supporting Workpapers – all of which are submitted for final approval to the Maricopa County Internal Audit Department.

### Presentation

Present (or assist in presentation) to the audited department the final audit results and all related information contained in the final report.

# ATTACHMENT 1

## HEALTH INSURANCE PORTABILITY and ACCOUNTABILITY ACT OF 1996 (HIPAA) PUBLIC LAW 104-191 BUSINESS ASSOCIATES PROVISIONS

This Attachment sets out the HIPAA-related responsibilities and obligations of Contractor pursuant to the Contract between Contractor and Department.

### 1. Definitions

- A. Business Associate means an entity that performs or assists in the performance of a function on behalf of a Covered Entity, which involves the use, or disclosure of Individually Identifiable Health Information as defined in 45 C.F.R. § 160.103. Contractor is a Business Associate of Department under this Contract, and for purposes of Contractor's obligations under this Attachment "H", the terms "Business Associate" and "Contractor" are synonymous. Notwithstanding this definition, if Contractor does not have access to or create Protected Health Information under this Contract, Contractor is not a Business Associate, and the terms of this Attachment "H" do not apply to Contractor.
- B. Contract means the entire agreement between the parties.
- C. Contractor for purposes of this Attachment "H" means any party to this Contract which is not a department of Maricopa County government.
- D. Covered Entity means a health plan, a health care clearinghouse, or a health care provider that transmits any health information in electronic form in connection with a transaction covered by HIPAA as defined in 45 C.F.R. § 160.103. Department or a part of Department, as designated by Maricopa County, is a Covered Entity under this Contract.
- E. Data aggregation means the function of combining the Protected Health Information received by a Business Associate from another Covered Entity with that of Covered Entity, to allow data analyses related to the health care operations of the covered entities as defined in 45 C.F.R. § 164.501.
- F. Department means the party to this Contract that is part of Maricopa County government.
- G. HIPAA refers to the Health Insurance Portability and Accountability Act of 1996 (PL 104-191) and the United States Department of Health and Human Services' (DHHS) final regulations on "Privacy Standards for Individually Identifiable Health Information," which comprise 45 C.F.R. §§ 160.101 through 164.534, as amended and modified from time to time.
- H. Individual means the Individual who is the subject of the Protected Health Information.
- I. Individually Identifiable Health Information ("Protected Health Information") is health information that is created or received by a Covered Entity; and relates to the physical condition, mental health or other health condition of an Individual, or to the provision of health care to the Individual (including but not limited to the payment for such health care); and identifies or can be used to identify the Individual as defined in 45 C.F.R. § 160.103.

### 2. Permitted and Required Uses and Disclosure of Protected Health Information

- A. Permitted Uses and Disclosures: Business Associate is permitted to use and disclose Protected Health Information only for those purposes necessary to perform its duties, obligations and functions under this Contract, or as otherwise expressly permitted in this Contract or as required by law, including as follows:

- i. To the Individual;
  - ii. For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506 of HIPAA;
  - iii. Incident to a use or disclosure otherwise permitted or required by §§ 164.500 through 164.534, provided that the Covered Entity has complied with the applicable requirements of §164.502(b), § 164.514(d), and § 164.530(c), all of HIPAA, with respect to such otherwise permitted or required use and disclosure;
  - iv. Pursuant to and in compliance with an authorization that complies with § 164.508 of HIPAA;
  - v. Pursuant to an agreement under, or as otherwise permitted by, § 164.510 of HIPAA; and
  - vi. As permitted by and in compliance with § 164.502, § 164.512, or § 164.514(e), (f), or (g) of HIPAA.
- B. Required disclosures: A Covered Entity is required to disclose Protected Health Information and/or other information as follows:
- i. To an Individual, when requested under, and as required by §§ 164.524 or 164.528 of HIPAA;
  - ii. When required by DHHS, Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Department available to DHHS for purposes of determining compliance with HIPAA. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by Business Associate or Department as a result of this section; and
  - iii. When required by Department, Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Department available to Department.
- C. Prohibited Use or Disclosure and Exceptions: Business Associate shall not use or further disclose Protected Health Information in a manner that would violate HIPAA, except that:
- i. Business Associate may use and disclose Protected Health Information for the proper management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate, if:
    - a. The disclosure is required by law; or
    - b. Business Associate obtains reasonable written assurances from the person to whom Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as required by HIPAA or other applicable laws or for the purpose for which it was disclosed to the person; and

The person notifies Business Associate of any instances of which it is aware in which the confidentiality of Protected Health Information has been breached.
  - ii. Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

**3. Business Associate agrees that it shall:**

- A. Not use or further disclose Protected Health Information other than as permitted or required by this Contract or as permitted or required by HIPAA;
- B. Use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided by this Contract;
- C. Report to Department any use or disclosure of Protected Health Information not permitted by this Contract within 5 days of learning of such use or disclosure;
- D. Ensure Department that any of Business Associate's agents, including its contractors and subcontractors (collectively, "agents.") to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Department, agrees to the same restrictions and conditions that apply to the Business Associate with respect to such information;
- E. Make available Protected Health Information in accordance with § 164.524 of HIPAA;
- F. Make available Protected Health Information for amendment and incorporate any amendments made by the Individual to Protected Health Information in accordance with § 164.526 of HIPAA;
- G. Make available the information required to provide an accounting of disclosures in accordance with § 164.528 of HIPAA;
- H. At termination of this Contract, return or destroy all Protected Health Information received from, or created or received by Business Associate on behalf of, Department that Business Associate or its agents still maintain in any form and retain no copies of such information. If the Protected Health Information is destroyed, Business Associate shall provide Department with an affidavit to that effect. If such return or destruction is not feasible, Business Associate agrees that it shall extend the protections of this Contract to Protected Health Information and limit further uses and disclosures to those purposes that make the return or destruction of Protected Health Information unfeasible; and
- I. If Business Associate and/or its agents, conduct transactions or any part of transactions as defined in § 160.103 of HIPAA under this Contract, Business Associate shall comply, and shall require that its agents, comply with all applicable requirements of HIPAA regarding such transactions.

**4. Termination by Department**

In addition to other termination provisions of this Contract, Business Associate agrees that Department may terminate this Contract, if Department determines, in its sole discretion, that Business Associate has violated a material term of this Attachment "H".

**5. Indemnification**

In addition to its other indemnification obligations pursuant to this Contract, Business Associate shall defend, indemnify and hold Maricopa County, Department, its agents, representatives, officers, directors, officials and employees harmless from and against any and all claims, suits, expenses (including reasonable attorneys' fees and court costs), liabilities or damages (whether resulting from settlement, judgment, arbitration or otherwise) arising directly or indirectly from Business Associate's and/or Business Associate's agents' violation of HIPAA in connection with this Contract. This indemnification provision and Business Associate's indemnification obligations shall survive the termination of this Contract.

**6. No Third Party Beneficiaries**

Nothing express or implied in this Attachment “H” is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

**7. Amendment to Comply with Law**

The Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Attachment “H” may be required to ensure compliance with such developments. Should such developments occur, and upon either Party’s good faith request, the other Party agrees to enter good faith negotiations concerning the terms of an amendment to this Attachment “H”.

**8. Conflict with Other Terms and Conditions**

In the event of a conflict between this Attachment “H” and other terms and conditions agreed to by the parties, the Attachment “H” shall control with respect to its subject matter.



**KPMG LLP, ONE ARIZONA CENTER, 400 E VAN BUREN STREET #1100, PHOENIX, AZ 85004**

**P089302/B0604645**

Terms:	NET 30
Vendor Number:	<b>W000005081 X</b>
Telephone Number:	602/250- <b>8117</b>
Fax Number:	602/250-0011
Contact Person:	<b>Michael Suba</b>
E-mail Address:	<a href="mailto:msuba@kpmg.com">msuba@kpmg.com</a>
Company Web Site:	<a href="http://www.kpmg.com">www.kpmg.com</a>
Certificates of Insurance	Required
Contract Period:	To cover the period ending <b>December 31, 2003 2004 2005 2006.</b>